

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUBERT DUPIGNY,

Plaintiff,

-against-

JOHN/JANE DOE,

Defendants.

20-CV-9359 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated in MDC Brooklyn, brings this *pro se* action under 42 U.S.C. § 1983, alleging that United States Attorney Geoffrey Berman, and Assistant District Attorneys Elinor Torlow, Mollie Bracewell, and Jacob Gutwilling violated his constitutional rights.¹ For the following reasons, the Court dismisses this complaint without prejudice.

Plaintiff has previously submitted to this Court a complaint against the same Defendants that raises substantially similar claims. That action is pending in this Court under docket number 20-CV-5346 (CM).² Because this complaint raises the same claims, no useful purpose would be served by the filing and litigation of this duplicate complaint. Therefore, this action is dismissed without prejudice to Plaintiff's pending action under docket number 20-CV-5346 (CM).

¹ Plaintiff submitted this action without the \$400.00 filing fees – a \$350.00 filing fee plus a \$50.00 administrative fee – or, a request authorization to proceed *in forma pauperis* (IFP), that is, without prepayment of fees, and a prisoner authorization.

² Because Plaintiff also submitted the previous action without the filing fees or an IFP application and prisoner authorization, by order dated July 27, 2020, the Court directed Plaintiff, within 30 days of that order, to either pay \$400.00 in fees or submit a signed IFP application and a prisoner authorization. (20-CV-5346, ECF No. 2.) The Court has granted Plaintiff two extensions to comply with its July 27, 2020 order, (*Id.* at ECF Nos. 4, 6), and although Plaintiff's time to comply expired on November 14, 2020, the case remains open. On November 9, 2020, the Court received Plaintiff's letter wherein he indicates that he wishes to pay the filing fees. (*Id.* at ECF No. 7.)

In light of the Court's belief that Plaintiff may have submitted this duplicate complaint in error, the Clerk of Court shall not charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust fund account for this action.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court dismisses this complaint without prejudice.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 19, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge